

Message Text

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ORIGIN EB-08

INFO OCT-01 AF-10 ARA-10 EUR-12 EA-10 IO-13 ISO-00
L-03 FRB-03 OMB-01 ITC-01 SP-02 USIA-06 AGRE-00
AID-05 CIAE-00 COME-00 INR-10 LAB-04 NSAE-00
OIC-02 SIL-01 STR-07 TRSE-00 CEA-01 SS-15 DOTE-00
NSC-05 H-01 PA-01 /132 R

DRAFTED BY EB/TRA/MA:REJOHE:PJP
APPROVED BY EB/TRA/MA:RKBANK
EB/TRA:JATWOOD
AF/W:BKOTT
L/EB:JBELLO
AF/W:RHART
EB/IFD/ODF:ELOLLIS
EA/TIMBS:LROCKE
ARA/ECP:DTAHER
EA/PHL:BFLECK
EUR/RPE: PLAASE
IO: DCOHN
DOT: WDRISCOLL
IO/IEP: EBRUCE
EB/TRA/MA: CTAYLOR JR
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R 240300Z MAR 78
FM SECSTATE WASHDC
TO AMEMBASSY MEXICO
AMEMBASSY LIMA
AMEMBASSY BRASILIA
AMEMBASSY BUENOS AIRES
AMEMBASSY BOGOTA
AMEMBASSY ACCRA
AMEMBASSY JAKARTA
AMEMBASSY KUALA LUMPUR
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USMISSION USUN NEW YORK
AMEMBASSY PARIS

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PARIS FOR USOECD

E.O. 11652: N/A

TAGS: UNCTAD, EWWT

SUBJECT: RE-EVALUATION OF USG PARTICIPATION IN THE FIFTH
UNCTAD INTERGOVERNMENTAL PREPARATORY GROUP (IPG) ON
INTERNATIONAL MULTIMODAL TRANSPORT

1. SINCE LATE 1973, THE US HAS PARTICIPATED IN FOUR
SESSIONS OF AN UNCTAD INTERGOVERNMENTAL PREPARATORY GROUP
(IPG) WHICH HAS UNSUCCESSFULLY ATTEMPTED TO DEVELOP A
DRAFT CONVENTION ON INTERNATIONAL MULTIMODAL
TRANSPORT (MT). SUCH A CONVENTION WOULD APPLY TO THE
CARRIAGE OF A PRODUCT THAT IS TRANSPORTED BY SEVERAL
DIFFERENT MEANS OF TRANSPORT SUCH AS RAIL, ROAD, AND
MARITIME. SUBSEQUENT TO THE CONCLUSION OF THE GENERALLY
UNPRODUCTIVE FOURTH IPG (NOV. 14-25, 1977), THE USG, WITH
INDUSTRY CONCURRENCE, DECIDED THAT OUR PARTICIPATION IN
THE FIFTH IPG, NOW TENTATIVELY SCHEDULED FOR SEPTEMBER
18-OCTOBER 6, 1978, SHOULD BE CRITICALLY EXAMINED. AN
OVERRIDING QUESTION IS WHETHER THE IPG IS LIKELY TO
PRODUCE A CONVENTION WHICH WILL BENEFIT THE US. THE USG
HAS HAD DOUBTS ABOUT THIS SINCE THE SECOND IPG IN 1974.
THUS, WE ARE NOW EVALUATING WHETHER IT IS IN THE US
INTEREST TO CONTINUE IN THE IPG.

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2. AS PART OF THIS EVALUATION, THE DEPARTMENT WOULD

APPRECIATE THE VIEWPOINTS OF THE HOST GOVERNMENTS OF
ACTION ADDRESSEES REGARDING (A) THE OBJECTIVES OF THEIR
PARTICIPATION IN THE IPG, (B) THEIR ASSESSMENT OF THE
PROSPECTS FOR MAKING PROGRESS AT FUTURE SESSIONS OF THE
IPG AND (C) THEIR REACTION TO THE POSSIBILITY OF A US
WITHDRAWAL. POSTS MAY DRAW UPON THE BACKGROUND INFORMA-
TION PROVIDED IN PARAGRAPHS 7 AND 8 WHEN DISCUSSING THE
IPG WITH HOST GOVERNMENT OFFICIALS. THE REPRESENTATION
SHOULD BE INFORMAL AND LOW-KEYED. REQUEST ADDRESSEES
REPORT RESULTS TO DEPARTMENT (EB/TRA/MA) WITH INFO TO
GENEVA AND OECD PARIS.

3. FYI: A SIMILAR INQUIRY WAS DIRECTED TO OECD
COUNTRIES IN JANUARY WITH THE ADDITIONAL QUESTION OF
WHETHER HOST GOVERNMENTS WOULD JOIN THE US IN WITH-
DRAWING FROM THE IPG IF THE US DETERMINED SUCH ACTION
AS APPROPRIATE. A SYNOPSIS OF THE REPLIES INDICATES
THAT THE OECD COUNTRIES GENERALLY WANT TO WAIT UNTIL
AFTER A JUNE 14-16 MEETING IN PARIS OF THE GROUP B
MEMBERS OF THE UNCTAD IPG BEFORE MAKING A DECISION;
SEVERAL WANT TO WAIT UNTIL AFTER THE 5TH IPG BEFORE
MAKING A DECISION; THEY REALIZE THAT US PARTICIPATION IN
ANY IPG IS VERY SIGNIFICANT IF ANY MT CONVENTION IS TO
HAVE MEANING; AND THEY HOPE THAT THE US WILL DELAY ANY

WITHDRAWAL DECISION UNTIL AT LEAST AFTER THE JUNE MEETING. IN ANY EVENT, THEY WILL NOT SUPPORT A US WITHDRAWAL NOW, BUT SOME COUNTRIES MIGHT DO SO IF LITTLE PROGRESS IS MADE AT THE 5TH IPG. END FYI.

4. FOR MEXICO CITY AND LIMA: THE PERSONS LISTED BELOW MAY BE HELPFUL AS POINTS OF CONTACT, SINCE THEY HAVE REPRESENTED THEIR GOVERNMENTS AT PREVIOUS IPG'S:

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MEXICO - JOSE' JUAN VELARDE BONNIN, SUB-SECRETARIAT OF PORTS AND MERCHANT MARINES.

PERU - ALFONSO PANIZO ZARIQUAY, ASSOCIATION OF LATIN AMERICAN SHIPOPERATORS.

5. FOR BRASILIA, BUENOS AIRES, BOGOTA, ACCRA, JAKARTA, KUALA LUMPUR, MANILA: THE PERSONS LISTED BELOW FROM PERMANENT MISSIONS IN GENEVA, HAVE REPRESENTED THEIR RESPECTIVE COUNTRIES AT RECENT IPG'S. POSTS, HOWEVER, SHOULD CONTACT APPROPRIATE OFFICIALS IN HOST GOVERNMENT CAPITALS FOR OPINIONS:

BRAZIL - PEDRO BARROS
ARGENTINA - GABRIEL MARTINEZ
COLOMBIA - HECTOR CHARRY SAMPER

GHANA - H. MILLS-LUTTERODT
INDONESIA - K. MARTOHADINEGORO
MALAYSIA - YEE CHE FONG
PHILIPPINES - H. J. BRILLANTES

6. FOR GENEVA: WE WOULD WELCOME ANY ADDITIONAL COMMENTS WHICH MISSION GENEVA MAY WISH TO PROVIDE ON THE CURRENT ATTITUDES OF PERMANENT MISSIONS NOTED PARA. 5 PLUS NIGERIA TOWARD THE WORK OF THE IPG AND A MT CONVENTION.

7. THE PURPOSE OF THE IPG IS TO ELABORATE A PRELIMINARY DRAFT OF A CONVENTION ON INTERNATIONAL MULTIMODAL TRANSPORT. POSTS SHOULD EXPLAIN THAT THE ULTIMATE US OBJECTIVE IN THE IPG NEGOTIATIONS WOULD BE THE DEVELOPMENT OF A DRAFT CONVENTION LIMITED TO PRIVATE LAW
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ISSUES, WHICH WOULD ADDRESS SUCH BASIC COMMERCIAL MATTERS AS SHIPPING DOCUMENTATION, LIABILITY AND INSURANCE AND

THE LIKE AS THEY AFFECT TRANSPORTATION BY MULTIMODAL MEANS SUCH AS RAIL, ROAD, AND MARITIME. A PRIVATE LAW CONVENTION (E.G., THE HAGUE CONVENTION OF 1924, TS 931, REGARDING RULES FOR BILLS OF LADING) PRIMARILY ESTABLISHES A SYSTEM OF RULES AND REGULATIONS APPLICABLE TO PRIVATE TRANSACTIONS BETWEEN INDIVIDUALS. ALTHOUGH STATES NEGOTIATE AND RATIFY SUCH A CONVENTION AND ENACT IMPLEMENTING LEGISLATION WHERE NECESSARY, ITS TERMS GOVERN TRANSACTIONS BETWEEN INDIVIDUALS, CORPORATIONS, AND OTHER NONGOVERNMENTAL ENTITIES. ON THE OTHER HAND, A QUOTE PUBLIC LAW CONVENTION UNQUOTE (E.G., THE LOAD LINES CONVENTION OF 1966, TIAS 6331) PRIMARILY ADDRESSES RIGHTS AND DUTIES OF SOVEREIGN STATES IN THEIR RELATION TO EACH OTHER. ALTHOUGH INDIVIDUALS, CORPORATIONS, AND OTHER NONGOVERNMENTAL ENTITIES MAY BE AFFECTED THEREBY, THE PRIMARY FOCUS OF A PUBLIC LAW CONVENTION IS UPON INTERGOVERNMENTAL RELATIONS. WHILE MULTIMODAL TRANSPORT COULD INCLUDE BREAK-BULK (NORMALLY PALLETIZED) SHIPMENTS, FOR THE MOST PART IT INVOLVES CONTAINERIZED CARGOES. THE PURPOSE OF ANY CONVENTION WOULD BE TO STANDARDIZE AND FACILITATE THE MULTIMODAL MOVEMENT. FOR EXAMPLE, UNDER A CONVENTION, A SHIPMENT FROM ATLANTA TO FRANKFURT COULD BE UNDER A SINGLE BILL OF LADING AND A SINGLE INSURANCE REGIME. SUCH SHIPMENTS ARE NOW DONE REGULARLY IN THE COMMERCIAL WORLD, BUT THEY INVOLVE MULTIPLE LIABILITY RULES AND COMPLEX DOCUMENTATION.

8. WHILE OTHER OECD COUNTRIES GENERALLY SHARE OUR OBJECTIVES IN THE IPG, THE GROUP OF 77 HAS PRESSED FOR A CONVENTION THAT WOULD CONTAIN PUBLIC LAW PROVISIONS AND

REQUIRE MANDATORY, RATHER THAN OPTIONAL, APPLICATION OF ANY CONVENTION TO ALL MT OPERATORS. IF THESE BASIC LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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DIFFERENCES CANNOT BE RESOLVED, THE UTILITY OF CONTINUING TO WORK IN THE IPG TO DEVELOP A CONVENTION IS IN DOUBT. TO DATE, THERE HAVE BEEN 4 IPG'S--OCTOBER 1973, 1 WEEK; NOVEMBER 1974, 3 WEEKS; JANUARY 1976, 2 WEEKS; JANUARY 1977, 3 WEEKS; NOVEMBER 1977, 2 WEEKS. THE RESULTS OF 11 WORKING WEEKS HAVE NOT BEEN ENCOURAGING. THE ONLY SIGNIFICANT DRAFTING ACCOMPLISHED HAS BEEN IN THE AREAS OF DOCUMENTATION AND SCOPE OF APPLICATION. WITHIN THESE AREAS, ANY SIGNIFICANT ARTICLES HAVE BEEN BRACKETED. ADMITTEDLY, THE SUBSTANTIVE MATTERS ARE BASICALLY LEGAL AND QUITE COMPLICATED IN SCOPE. HOWEVER, THE REPORT OF OUR DELEGATION TO EACH SESSION HAS BEEN UNEQUIVOCAL IN ITS JUDGMENT ABOUT THE PAUCITY OF WORK PRODUCED TO DATE. FURTHERMORE, GROUP B (OECD COUNTRIES) IS NOT IN GENERAL AGREEMENT THAT THERE IS A NEED FOR A

CONVENTION; GROUP 77 IS FRAGMENTED; AND GROUPS B AND 77 SEEM TO CLASH ON EVERY SUBSTANTIVE ISSUE. THE CARRIER SEGMENT OF US INDUSTRY HAS CONSISTENTLY BELIEVED THAT NO PRIVATE LAW CONVENTION BENEFICIAL TO THEIR INTERESTS COULD EMERGE FROM THE IPG. THIS ALSO APPEARS TO BE THE GENERAL VIEWPOINT OF SEVERAL USG AGENCIES (STATE, FEDERAL MARITIME COMMISSION, CUSTOMS, AND MARITIME ADMINISTRATION).

9. FYI: RESPONSES RECEIVED AS A RESULT OF EMBASSY/ MISSION INQUIRIES WILL BE UTILIZED IN PREPARATION OF A DEPARTMENT ACTION MEMORANDUM WHICH WILL BE CIRCULATED FOR APPROVAL OF INTERESTED GOVERNMENT AGENCIES WHEREIN THERE WILL BE 2 OPTIONS--(A) WITHDRAW FROM THE 5TH IPG AND SEND ONLY AN OBSERVER; (B) CONTINUE FULL PARTICIPATION I THE IPG. AS A HEDGE AGAINST THE BURNING OF BRIDGES, OPTION A WOULD CONTAIN 2 PROVISOS: THAT THE USG COULD DELAY ANY FINAL DECISION UNTIL AFTER LIMITED OFFICIAL USE
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PROSPECTS FOR THE 5TH IPG ARE DISCUSSED AT A PROPOSED JUNE 14-16 MEETING OF GROUP B COUNTRIES; AND THAT IF THE USG LATER DECIDES THAT THE 5TH IPG MAY IN FACT PRODUCE RESULTS BENEFICIAL TO THE US, THEN IT COULD AT THE LAST MINUTE DECIDE TO PARTICIPATE. IN ANY EVENT, THE DEPARTMENT BELIEVES IT IMPERATIVE THAT A SIGNAL NOW BE GIVEN TO IPG PARTICIPANTS THAT THE USG IS NOT ONLY DISAPPOINTED WITH THE RESULTS OF THE IPG THUS FAR, BUT IS CRITICALLY EXAMINING ITS FUTURE PARTICIPATION. WHILE THE USDEL HAS MADE ITS JUDGMENTS KNOWN AT THE IPG'S, WE HOPE THAT A MORE CRITICAL AND CLOSER EXAMINATION CAN POSSIBLY BE MADE OF THE PROBLEM IN THIS INTERIM PERIOD OUTSIDE THE UNCTAD FORUM. END FYI. VANCE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 sep 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INTERGOVERNMENTAL COOPERATION, INTERMODAL TRANSPORTATION
Control Number: n/a
Copy: SINGLE
Draft Date: 24 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE075993
Document Source: ADS
Document Unique ID: 00
Drafter: EB/TRA/MA:REJOHE:PJP
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Expiration:
Film Number: D780130-0728
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t197803126/baaafcen.tel
Line Count: 256
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Message ID: da6c5ebb-c288-dd11-92da-001cc4696bcc
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3166913
Secure: OPEN
Status: NATIVE
Subject: RE-EVALUATION OF USG PARTICIPATION IN THE FIFTH UNCTAD INTERGOVERNMENTAL PREPARATORY GROUP (IPG) ON INTERNATIONAL MULTIMODAL TRANSPORT
TAGS: EWWT, PORG, US, UNCTAD
To: MEXICO LIMA MULTIPLE
Type: TE
vdkgvkey: odbc://SAS/SAS.dbo.SAS_Docs/da6c5ebb-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014